

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
JAMES H. KINGSLAND,

Plaintiff,

- against -

BLOOMBERG L.P.; AND MICHAEL CLANCY,
INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY
AS AN EMPLOYEE OF BLOOMBERG L.P.,

Defendants.
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Index No.

COMPLAINT
(Jury Trial Demanded)

05116271

FILED
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NEW YORK
COUNTY CLERK'S OFFICE

COMES NOW Plaintiff, James H. Kingsland ("**Kingsland**"), by and through his undersigned counsel, The Law Offices of Neal Brickman P.C., located at 317 Madison Avenue, 21st Floor, New York, New York, 10017, and as and for his complaint against defendants, Bloomberg L.P. ("**Bloomberg**") and Michael Clancy ("**Clancy**"), states and alleges as follows:

NATURE OF THE ACTION

1. This is an action alleging disability discrimination, age discrimination and retaliatory conduct under New York Executive Law § 296, and New York Administrative Law §§ 8-107. Kingsland alleges that immediately following: (1) his diagnosis and treatment for acute nephrotic syndrome and consequent kidney failure; and (2) his crossing the threshold age of forty (40), he was subject to adverse employment decisions resulting in his demotion from the sought-after Afternoon News Director position, reduction in his compensation, and contrived negative performance reviews despite being assured that he would continue in his former position following kidney transplant surgery. Kingsland maintains that defendants

would not have engaged in these adverse actions but for Kingsland's age and disability. Additionally, Kingsland alleges that his repeated complaints concerning defendants' discriminatory treatment, including, but not limited to, his demotion, were met with retaliatory acts including contrived negative performance reviews, further demotion to the non-management position of "copy editor," and drastic cuts in compensation. Kingsland seeks compensatory and punitive damages, costs, relevant interest, and attorneys' fees for these violations.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter because Defendant Bloomberg is a Limited Partnership duly authorized to do business in this State and maintains its principal offices in this State. In addition, the complained of decisions and actions by defendants giving rise to these claims herein were authorized and promulgated within the State; and because the amount in controversy exceeds the jurisdictional minimum required by this Court.

3. Venue properly lies in this district as the defendant entity maintains its primary offices in this department and, as set forth more fully herein, a majority of the claims asserted by plaintiff arose in this county.

PARTIES

4. Plaintiff James H. Kingsland ("**Kingsland**") is an individual citizen of this State and of the United States residing at 15 Westgate Road, Montebello, New York 10901. Kingsland is forty-one (41) years old and an employee of Defendant Bloomberg L.P.

5. Upon information and belief, at all times relevant hereto, Defendant

Bloomberg was and is a Delaware Limited Partnership, duly authorized to conduct business in the State of New York and subject to the laws and statutes thereof.

6. As set forth further below, Bloomberg is a multi-media conglomerate which maintains its principal place of business in New York City. It specializes in the broadcast and dissemination of news and financial information by, *inter alia*, frequency AM 1130 (WBBR - New York, New York), transmitted throughout the New York City metropolitan area, thus directly availing itself of the laws of the State of New York and doing substantial business therein.¹

7. Upon information and belief, at all times relevant hereto, defendant Clancy served as Kingsland's "Team Leader" and "Bureau Chief" or "Managing Editor" and reported directly to Bloomberg's senior management. In that capacity, Clancy qualifies as an "employer" under New York Executive Law § 296 and New York Administrative Law §§ 8-107 because he could control the terms and conditions of Kingsland's employment, including the ability to hire and fire him.

FACTUAL BACKGROUND

8. On or about October 12, 1992, Mr. Kingsland, then 28 years of age, began working for Bloomberg L.P. as a "morning drive" business anchor.

9. Michael Bloomberg personally hired Kingsland, who already was an

¹To further strengthen its ties to the New York metropolitan area, and in an effort to enhance its New York market share, defendant Bloomberg L.P. touts its affiliation with New York City Mayor Michael Bloomberg in its advertising, and transacts business under a series of eponymous trade names, including "Bloomberg News," "Bloomberg Radio," "Bloomberg.com" and "Bloomberg Television."

accomplished news anchor with one of Bloomberg's fiercest competitors, CNBC.

10. During Kingsland's first eleven (11) years as a Bloomberg employee, he rose quickly in prominence and stature, earning consistent annual pay raises and performance-based bonuses (paid in the form of "equity equivalency certificates"), the combination of which increased Mr. Kingsland's compensation substantially.

11. In late 2001, management promoted Kingsland to the position of Morning Editor. As Morning Editor, Kingsland continued to excel in all aspects of his employment, receiving uniformly positive performance reviews and additional compensation in the form of equity equivalency certificates.

12. Kingsland's health did not keep pace with his career. In or about March of 2002, Kingsland was diagnosed with nephrotic syndrome, a chronic and acute kidney disease which, in his case, led to rapid, and total, kidney failure.

13. Despite the immeasurable discomfort of his condition, which caused bouts of incessant vomiting, ultra-high blood pressure, as well as anemia and consequent fatigue, Kingsland's talents and unceasing efforts were such that Kingsland again was promoted in 2003. Kingsland was promoted to the position of Afternoon News Director and Team Leader, a venerated senior position in which he reported directly to the Managing Editor.

14. Kingsland's performance was reviewed annually, upon information and belief, as a matter of ordinary business practice.

15. Upon information and belief, Kingsland was evaluated once as Afternoon News Director, in the ordinary course of business, for the period beginning October 2003 and

ending October 2004, but not actually conducted until July of 2004. The 2003-2004 evaluation prominently identifies Mr. Kingsland's position as that of "P.M. News Director, New York," describes Kingsland's expansive responsibilities as a manager and editor, and details his extensive contributions to the network.

16. According to management in that review, Kingsland was responsible for "the content and presentation of news and information broadcast on radio during the afternoon, evening and weekend hours." The evaluation stresses Kingsland's role as a "manager of approximately 25 reporters and editors" and credits him with having implemented several new programs, as well as having produced the "political convention coverage in Boston and New York." Management places Kingsland in the inner circle of management "responsible for all of the news aired on WBBR and [its] affiliates."

17. The constructive criticism component of the evaluation focused on the fact that the major difficulty facing Kingsland as a manager was transferring his talents, experience, and abilities to the rest of the staff, who were not able to perform on Kingsland's level.

18. The aforementioned evaluation, bearing the submission date of July 23, 2004, concluded by ranking Mr. Kingsland as an employee whose performance "generally meets and in some respects exceeds expectations," despite the fact that his kidneys were failing, and he was suffering severe nausea, extreme high-blood pressure, swelling, and anemia at the time.

19. Over the next several months, from August to September 2004, Kingsland's kidneys suffered accelerated deterioration. His treating physicians concluded that

unless he received a kidney transplant, he would die. However, Kingsland held out hope, knowing that his brother had agreed to volunteer as an organ donor. Preliminary testing confirmed that his brother was an acceptable match.

20. On or about October 25, 2004, Kingsland was granted authorized medical leave in order to undergo the transplant procedure. Before his departure, Defendant Clancy, newly promoted to the position of Managing Editor, told Kingsland that, after the transplant, he would return to his position as team leader to "make radio better."

21. Upon information and belief, it was the custom and practice of Bloomberg to restore positions to senior managers who had taken a medical leave of absence of less than six (6) months.

22. Medical complications rendered Kingsland's brother ineligible as a transplant donor, and the procedure had to be postponed until another match could be found. Kingsland's wife Melissa "stepped up" and agreed to donate one of her kidneys, but the transplant could not be performed without the prerequisite testing, evaluation and analysis to ensure that Kingsland's body would not reject her kidney.

23. By February 2005, Kingsland's red blood cell count was reduced to a level that endangered the likelihood of success due to the possible need for blood transfusions, which, introducing foreign blood cells into the body, boost the creation of antibodies that often trigger rejection of the transplant organ. Kingsland continued to deteriorate substantially.

24. Finally, with Kingsland near death, Melissa Kingsland was approved as a donor. The transplant procedure was performed on or about March 11, 2005, and proved successful. Kingsland was forty-one (41) years old at the time of the procedure.

25. Although the disease also had damaged his heart, eyes, and stomach, Kingsland began to recover, and was determined to return to work. From his hospital bed on or about March 13, 2005, approximately two (2) days after the the transplant, Kingsland contacted Suzanne Lazarchick, in Bloomberg's Human Resources Department, to inquire about returning to his job as soon as possible. Lazarchick told Kingsland that she was looking forward to his return.

26. On or about April 1, 2005, approximately twenty (20) days after the the transplant, Kingsland again contacted Lazarchick, to inquire about returning to his job on May 16, 2005.

27. Upon information and belief, Lazarchick was and is a senior employee in Bloomberg Human Resources who, among other things, was responsible for determining the nature and extent of Kingsland's medical leave, whether the conditions of his leave were met, and the terms and conditions of Kingsland's return to work.

28. Kingsland sent several follow-up e-mail messages to Lazarchick, all of which went unanswered. Lazarchick finally responded on or about May 4, 2005, and asked to speak to Kingsland by phone.

29. Immediately thereafter, Kingsland phoned Lazarchick who told him that whether or not he would get his position back depended on whether there were any restrictions on his activities due to his "disability."

30. Kingsland reported back to work on or about May 16, 2005. By this time, defendant Clancy had replaced the former Managing Editor and was now Kingsland's boss.

31. Upon his return, Kingsland immediately met with defendant Clancy and informed Clancy that he was ready, willing and able to continue as Afternoon News Director and team leader. Kingsland further explained that he was the most qualified Bloomberg employee for the position in light of his extensive experience.

32. Defendant Clancy told Kingsland that he was no longer qualified for the position because the position had been “reevaluated” in Kingsland’s absence and that Kingsland’s “health” would not enable him to “handle the expanded hours and duties of the job.”

33. Upon information and belief, Clancy has no training in nephrology or medicine of any kind, and had no conceivably legitimate basis upon which to make such an assertion.

34. Upon information and belief, Clancy had neither read nor received any report, diagnosis, evaluation or other indication from a competent physician which would have indicated Kingsland was not qualified for the position in its supposed “reevaluated” form.

35. For several weeks following his May 16, 2005 return, Kingsland was not told what position, if any, he would assume. However, Kingsland immediately discovered that his hours, duties, and responsibilities had been reduced substantially, that he had been stripped of all production or managerial duties, and that he had been demoted from Afternoon News Director, all as a direct result of his disability. When Kingsland continued to object to this discriminatory treatment, he was assigned to a relatively menial “copy editor” position in direct retaliation for his complaints.

36. By the end of May, 2005, Kingsland, realizing that he no longer was a

key player in Bloomberg management, became depressed and demoralized by his demotion and menial duties. As a direct result thereof, Kingsland began to discuss with Bloomberg management the possibility of taking additional time off. For Kingsland, the only reason for his expedited return in the first place was to recapture and continue in his previous position.

37. On or about October 21, 2005, Kingsland was evaluated by defendant Clancy and another team leader. Upon information and belief, the evaluation was conducted in the ordinary course of business and covered a period from October 22, 2004 (three days before Kingsland went on leave) to October 21, 2005. The evaluation identifies Kingsland's position only as "New York."

38. In the October 2005 evaluation, Kingsland raised the issue of his demotion to copy editor, as well as Clancy's representations on May 16, 2005, that Kingsland's health prevented him from returning to Kingsland's former position.

39. In the evaluation, Clancy denied that Kingsland's replacement "was in any way connected to his medical leave." Instead, Clancy asserted, falsely, that Kingsland's replacement was due to "deficiencies and shortcomings in his performance as Team Leader" and that his "past performance in a less demanding Team Leader role," rendered Kingsland unsuitable for the position.

40. Clancy's false and misleading assertions concerning Kingsland's performance as Afternoon News Director were calculated to retaliate against Kingsland for his opposition to the demotion and to re-characterize the 2003-2004 review (which speaks for itself) so as to provide a pretext for Clancy and Bloomberg's discriminatory conduct based on Kingsland's disability.

41. Upon information and belief, Michael Clancy and Al Mayers² filled the Afternoon News Director and Team Leader position --- previously described in the 2003-2004 evaluation as a key management position "responsible for all of the news aired on WBBR and [its] affiliates" and later described by Clancy as having been "reevaluated" so as to make it even more demanding --- with a twenty-six or twenty-seven (26 or 27) year-old individual with little or no experience and negligible journalistic credentials. Kingsland's replacement, one Anthony Mancici, is objectively unqualified to perform Kingsland's "old" job and, on the newsroom floor, is known alternatively as "Al's Boy" or "Clancy's Boy."

42. Since the 2002-2003 pay period, the same time that Kingsland turned 40, Mr. Kingsland's base salary has remained static, despite it having increased consistently by approximately 13% in each of the preceding eleven (11) years of his employment with Bloomberg. The cessation of these regular and predictable salary increases occurred shortly after Kingsland crossed the threshold age of 40, despite his continued excellent performance reviews at the time.

43. Moreover, since Kingsland communicated his opposition to the discriminatory demotion described herein, defendant Bloomberg has informed Kingsland that the number EECs awarded to him for the 2006-2007 period would be reduced dramatically from a total of 160 to a total of 50, thereby eliminating a vital and significant part of his compensation. This retaliatory act effectively constitutes an immediate \$65,000-70,000 reduction in pay to Mr. Kingsland as compared to previous years.

²Another Bloomberg manager and "team leader," not a party to this action.

AS AND FOR A FIRST CAUSE OF ACTION
(Disability Discrimination In Violation of New York Executive Law §296 and
New York City Administrative Code §8-107 As Against Both Defendants)

44. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs "1" through "42" with the same force and effect as if fully set forth herein at length.

45. Plaintiff suffered a disability within the meaning of § 296 of the Executive Law and § 8-107 of the New York Administrative Code, *inter alia*, in that his condition and subsequent treatment impaired a normal bodily function.

46. Defendants engaged in a pattern of discrimination against Plaintiff because of his disability, including, but not limited to, adverse employment decisions resulting in Kingsland's demotion, reduction in compensation, and contrived negative performance reviews; acts that they would not have engaged in but for Kingsland's disability.

47. By reason of the acts of discrimination detailed herein, Defendants have violated New York Executive Law § 296 and New York City Administrative Code §8-107 and have caused Plaintiff to suffer damages, including, but not limited to, loss of past and future income, damage to his business reputation and marketability, and emotional injuries.

48. Defendants' conduct was wanton, malicious, and contrary to public policy, and warrants an assessment of punitive damages.

WHEREFORE, plaintiff respectfully demands judgment as against Defendants in an amount to be determined at trial, but in no event less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) in compensatory damages; punitive damages in an amount to be determined at trial, but in no event less than Three Million Dollars (\$3,000,000); the costs and

disbursements of this action, including reasonable attorneys' fees; all relevant interest; and any such other relief to Plaintiff as this Court deems just and proper.

AS AND FOR A SECOND CAUSE OF ACTION

(Age Discrimination In Violation of New York Executive Law §296 and
New York City Administrative Code §8-107 As Against Both Defendants)

49. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs "1" through "47" with the same force and effect as if fully set forth herein at length.

50. Plaintiff was over the age of Forty (40) when his annual compensation was dramatically reduced, without cause.

51. Plaintiff's age was an impermissible factor in the decision to decrease his compensation.

52. Similarly situated younger employees (i.e. those with equivalent job duties and similar performance reviews) did not experience a reduction comparable to that of Plaintiff.

53. Plaintiff was over 40 when he was demoted and replaced by an objectively less qualified individual who was twenty-six (26) years old at the time.

54. There was no legitimate, nondiscriminatory reason for Plaintiff to be replaced by such an individual.

55. New York Executive Law §296 and New York Administrative Code § 8-107 prohibit discrimination on the basis of age.

56. As a direct result of these discriminatory acts, including, but not limited to, Kingsland's reduction in compensation and unjustifiable demotion, Plaintiff suffered injury

and harm including, but not limited to, loss of past and future income, damage to his business reputation and marketability, and emotional injuries.

57. Further, Defendant's conduct was wanton, malicious, and contrary to public policy, and warrants an assessment of punitive damages.

WHEREFORE, plaintiff respectfully demands judgment as against Defendant Bloomberg in an amount to be determined at trial, but in no event less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) in compensatory damages; punitive damages in an amount to be determined at trial, but in no event less than Three Million Dollars (\$3,000,000); the costs and disbursements of this action, including reasonable attorneys' fees; all relevant interest; and any such other relief to Plaintiff as this Court deems just and proper.

AS AND FOR A THIRD CAUSE OF ACTION
(Retaliation In Violation of New York Executive Law §296 and
New York City Administrative Code §8-107 As Against Both Defendants)

58. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs "1" through "56" with the same force and effect as if fully set forth herein at length.

59. Defendants engaged in acts of retaliation, including reduction in compensation, manufactured poor performance reviews and false allegations of deficient performance as a direct result of Plaintiff's opposition to, and complaints concerning, the age and disability discrimination that defendants perpetrated against him.

60. Specifically, upon Plaintiff's return from medical leave on or about May 16, 2005, Plaintiff was told that he would not be returning to his previous position. Plaintiff was not assigned any particular position at first, and was permitted to "float." However, after

Plaintiff continued to complain that he was being discriminated against because of health reasons, he was assigned a "copy editor" position. Additionally, when Plaintiff complained about his demotion in the 2005 performance review, defendant Clancy injected false and misleading assertions concerning Kingsland's performance as Afternoon News Director into the company record, calculated to retaliate against Kingsland for his opposition to the demotion and to re-characterize the 2003-2004 review (which speaks for itself) so as to provide a pretext for Clancy and Bloomberg's discriminatory conduct based on Kingsland's disability.

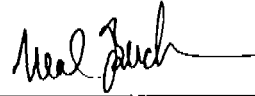
61. New York Executive Law § 296 and New York City Administrative Code § 8-107 prohibit acts of retaliation in response to an employee's filing or communication of a complaint or charge of improper discrimination as Plaintiff did herein, and have caused Plaintiff to suffer damages, including but not limited to, loss of past and future income, damage to his business reputation and marketability, and emotional injuries.

62. Further, Defendants' conduct was wanton, malicious, and contrary to public policy, and warrants an assessment of punitive damages.

WHEREFORE, plaintiff respectfully demands judgment as against Defendants in an amount to be determined at trial, but in no event less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) in compensatory damages; punitive damages in an amount to be determined at trial, but in no event less than Three Million Dollars (\$3,000,000); the costs and disbursements of this action, including reasonable attorneys' fees; all relevant interest; and any such other relief to Plaintiff as this Court deems just and proper.

63. Plaintiff hereby demands a jury trial of the facts and circumstances
alleged herein.

Dated: New York, New York
November 21, 2005



The Law Offices of Neal Brickman
Attorneys for Plaintiff James H. Kingsland
317 Madison Avenue - 21st Floor
New York, New York 10017
(212) 986-6840

===== NOTICE OF ENTRY =====

Sir:-Please take notice that the within is a true copy
of a
duly entered in the office of the clerk of the within
named court on _____, 20

Dated,

Yours, etc.

THE LAW OFFICES OF NEAL BRICKMAN
Attorneys for

Office and Post Office Address
317 MADISON AVENUE
21ST FLOOR
NEW YORK, NEW YORK 10017

To:

Attorney(s) for

===== NOTICE OF SETTLEMENT =====

Sir:-Please take notice that an order

of which the within is a true copy will be presented
for settlement to the Hon.

one of the judges of the within named Court, at

on _____ 20

at

Dated,

Yours, etc.

THE LAW OFFICES OF NEAL BRICKMAN
Attorneys for

Office and Post Office Address
317 MADISON AVENUE
21ST FLOOR
NEW YORK, NEW YORK 10017

To:

Attorney(s) for

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===== COMPLAINT =====

THE LAW OFFICES OF NEAL BRICKMAN
Attorneys for Plaintiff, James H. Kingsland

Office and Post Office Address
317 MADISON AVENUE
21ST FLOOR
NEW YORK, NEW YORK 10017

To:

Attorney(s) for

Service of a copy of the within
is hereby admitted.

Dated:

Attorney(s) for